Prince Edward Island COASTAL AREA POLICY

Department of
Community and Cultural Affairs

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INTRODUCTION

For centuries Islanders have been closely connected to the land base of the Province both economically and culturally. The economy of the Province is rooted in activities, including agriculture, forestry, the inshore fishery, acquaculture and tourism, which are land dependent. From this base comes our food processing industry and the bulk of our manufacuring and service jobs. Land is the basis of many of our recreational pursuits and is a cultural mainstay of the Province.

Nowhere is land more important than along our 1100 miles of coast. The narrow band of land and the nearshore waters which we refer to in the policy statement which follows as our "coastal area" is alive with activity. It is where we build cottages and houses; we entertain ourselves and our visitors and guests at our beaches, farm its' lands, fish in its' waters both commercially and recreationally, swim in it and boat upon it and generally enjoy its' quiet beauty. The coastal area is, in short, an enormous asset but one which must be carefully managed to ensure that the development which occurs in it is sustainable.

Over the past two decades Islanders have received the results of two major government-sponsored enquiries into land use in the Province. The 1973 "Raymond" Commission concluded that "in the face of the pervasive new pressures at work in their community, Islanders have expressed real apprehension over the future use and appearance of their garden province". This was a warning which came at the beginning of a substantial period of growth and development in the Province. The more recent Royal Commission on Land, in its' October 1990 report, concluded that:

> "For years we have been dipping into our capital in most areas relating to our land. We are not at the point of bankruptcy, but such an end is not that far off. It becomes, then, a matter of will for Islanders and their government. The time has come to cease the talk and to tend the garden."

The Royal Commission on Land recommended to government that it take decisive action with respect to land use and development within the coastal area. Government responded to the Commissions' report by indicating, in the March 1991 Speech from the Throne, that it intended to deal with the issues raised in both substance and spirit. In March the Coastal Protection Area was created and a temporary moratorium on some types of development was enacted. In July of that year government made public its'

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general land use policy which identified, among other things, the need to ensure that, as development proceeds across the Province it is sustainable, affordable to the public purse, and does not compromise our future economic and social prospects.

The policy which is contained in this document is the result of the work which commenced with the introduction of the Coastal Protection Area moratorium. It also signals the end of the moratorium and its' replacement with a comprehensive implementation package which includes a new regulatory regime which will be coupled with other measures to yield a balanced approach as we move towards the objective of sustainable development. The policy takes into account not only the recommendations of the Royal Commission which was, in its' own right, based on extensive public input, and the advice of knowledgeable individuals and groups, both government and non-government, but also the views expressed during the public meetings held across the Province last November under the sponsorship of the Rural Development Board. Meetings were also held with a group of persons representative of many of the interests associated with development within the coastal area.

The policy focuses on three main coastal development issues. The first part addresses subdivision and building. The second deals with the issue of how best to ensure that, as development proceeds, successive generations of Islanders will be assured that public access to the shore is maintained and the third part is directed to environmental protection of the distinctive features of the coastal area including beaches and dunes, wetlands, estuaries and so on.

In this time of rapid and massive change in the Province, the Country and the world it is essential, not merely desirable that we ensure that our land is sensibly an sensitively managed.This document should be regarded as the beginning of a new approach and not the end. There may well be revisions or amendments made as experience is gained, new issues identified and new approaches tried. Government invites all of the people of the Province to join with it as the process of moving towards sustainable development unfolds over the months and years to come.

I. GENERAL INTENT, PRINCIPLES AND OBJECTIVES:

It is the general intent of these policies that the development of land or its subdivision in the coastal area will be permitted to continue, but that it will be regulated to ensure that Provincial objectives and principles established for development in the coastal area are met.

The development of shorelands will be regulated to ensure that the general public (including residents and tourists) has access to the shore at certain locations, and that sufficient shorelands will be in public ownership to satisfy public recreation needs. Shoreland, with public access to it, will be acquired at selected locations. The principles underlying the shorefront access policies are:

- to preserve and enhance the traditional landscape;
- to ensure access for the present and future generations;
- to permit sustainable development of shorelands in keeping with other principles and objectives; and
- to protect fish and wildlife habitat and wetlands.

The general development principles for the coastal area are that development shall not adversely effect sustainable development objectives, degrade the natural environment, cause land use conflicts, create safety hazards, or cause public health risks. In principle, subdivision development shall:

a) be driven by market demand;

b) produce a net economic benefit for the Province;

c) result in development within a reasonable time;

d) be tied to lot-owner responsibilities for maintenance;

e) strengthen existing communities; and

f) be the responsibility of the developer, in terms of the costs of gaining approval.

II. DEFINITIONS AND APPLICATION:

For purposes of interpreting this policy:

- the definitions contained in the Planning Act and its regulations apply;

- the term "coastal area" is defined as all lands, including surface water bodies, streams, and rivers in the Province lying within 500 metres inland and seaward of the mean high water mark of all coastal and tidal waters;

- the terms "subdivision", and "subdivision of land" include the forecast effects of the subsequent development for which the subdivision was created; and

- municipalities with official plans and bylaws or zoning bylaws are subject to these policies.

III. COASTAL AREA SUBDIVISION:

Objectives

The objectives for subdivision of land in the coastal area are:

a) to protect prime resource lands and resource industry activities, including fishing, aquaculture, forestry, and agriculture by minimizing land use conflicts;

b) to retain the traditional character of the landscape;

c) to provide or maintain coastal recreational opportunities;

d) to protect natural environmental features and public health.

Policies

It is the policy of the Province:

SUBDIVISION APPROVAL:

- to require as a precondition for subdivision approval:

  a) the preparation of a binding site development plan showing physical and biological features and natural systems on lands proposed for subdivision;

  b) that the developer identify and obtain all the necessary permits; and

  c) the execution of a subdivision agreement with the Province.

- to ensure, by limiting access to public highways, that the Provincial highway system is able to maintain its function of moving goods and people efficiently and safely;

- to discourage premature subdivision by ensuring all approved subdivisions are assessed at market value;

- to ensure that certain services precede development by:

  a) requiring the provision of roads, prior to the sale of the lots created;

  b) requiring, where applicable, the installation of central water and sewerage facilities prior to the sale of the lots created; and

  c) requiring, where applicable, the acquisition of on-site sewage disposal and water supply permits prior to issuance of building permits;

- to minimize public costs in the subdivision approval process by:

  a) ensuring that the costs of studies, surveys and plans are borne by the developer; and

b) charging a fee for subdivision applications sufficient to defray the costs of processing the application;

- to ensure that accurate records of subdivision and building activity are kept and made available for distribution by maintaining a system of recording subdivision and building permit approvals and denials;

- to ensure that building lot purchasers are informed of constraints placed on subdivision approvals by requiring that subdivisions and management plans be registered/filed in registry offices;

- to ensure efficiency and flexibility in the subdivision design process by:

  a) developing and adopting performance standards over time; and

  b) developing subdivision design educational programs;

- that subdivision approval constitutes a change of use of the land from its use before subdivision;

- subdivision approval will be tied to realistic, short term market demand. Where no lot in a subdivision has been conveyed within a significant period of time, the approval will automatically lapse. The owner will, however, be enabled to reapply for subdivision approval in the event that circumstances change;

- coastal subdivisions will be given approval for a marketable first phase. Subsequent phases will receive approval only after a majority of previously phased lots have main buildings on them. This provision will apply in the case of previously approved subdivisions as well as to subdivisions created after the adoption of this policy;

SUBDIVISION DESIGN

- alternative approaches to subdivision design will be encouraged through incentives, education and regulatory changes. Private demonstration projects will be considered;

- minimum standards for subdivision design presentations will be prepared as guidelines and promoted;

- owners of older subdivisions with design problems will be encouraged to revise their subdivisions, within the limits of the pattern of remaining lots not yet conveyed or built upon;

- except for low density subdivision proposals comprised of low numbers of large lots, subdivision design guidelines will generally require that shorelines are held for common ownership and enjoyment of all lot owners in the subdivision;

- the conversion of cottages to permanent dwellings occurs frequently; subdivision design guidelines will recognize that such trends will continue;

LAND USE CONFLICTS

- subdivision designs will require that traditional beach accesses are respected and maintained. Where a key traditional public beach access is found to be on private property being subdivided, or immediately adjacent to a proposed subdivision, reasonable steps will be taken to secure the access for future public use. The subdivision will be required to be designed with adequate separation between the private development and the public shore access, so that the two uses do not conflict. To avoid confusion, all public access locations will be identified, recognized as such and clearly marked;

- subdivision design standards will be prepared requiring reasonable concentration of main building development in clusters in order to give all owners in a subdivision maximum common use of the shore, to preserve and enhance scenic vistas, woodlots, and farm fields where applicable, to facilitate road, sewer, and water services, and to minimize conflicts with other uses in the coastal area;

ENVIRONMENTAL PROTECTION

- subdivision requirements will ensure that developments with substantial numbers of lots are serviced by central water and sewer services unless the density is very low;

- subdivisions will be designed to show a substantial buffer zone between the shoreline and the first lots, based on applicable erosion rates in the area. In those cases where lots are designed to abut a shoreline they will be designed large enough to accommodate a dwelling adequately separated from the primary dune or the shoreline, as the case may be;

- existing coastal subdivisions with undersized lots will be evaluated to determine if they can be developed in an environmentally acceptable manner. Subdivisions identified as impractical by safe environmental standards will be required to be re-designed, within the limits of built-up development and ownership. Where it is not practical or possible to re-design the subdivision, approval of lots not yet sold or built on will be revoked;

SUBDIVISION AND BUILDING PERMIT PROCEDURES

- a vigorous information program on subdivision and building permit procedures will be carried out to better inform the general public;

- the "first-lot-off" and the "ten + acre" provisions will be repealed;

- variance provisions will be retained, and will be set out in the regulations so that consistent, fair decisions can be rendered in keeping with the general intent of the regulations; and

- procedures and programs will be revised to encourage people to stay within the law, and deliberate violations will be dealt with routinely, fairly, and effectively;

IV. ACCESS TO THE SHORE

Objectives

The objectives respecting access to the shore are to:

- to secure, within the coastal area, through regulatory or fiscal measures, selected shorefront land, and access to it, in order to ensure recreational and resource development opportunities for the general public; and

- to ensure that the use of public shorefront land is regulated to avoid conflicts of usage and to ensure sustainable use and development;

Policies

It is the policy of the Province:

- that, as a condition precedent to the granting of subdivision approval for residential (seasonal and year round) commercial and industrial development, provision shall be made for the following:

  a) at the option of the Province either deeding of a public right-of-way to the Province connecting a public road and the high water line, or cash-in-lieu of a right-of-way;

  b) that the Province shall be offered, at fair market value, any part of the lands proposed for subdivision which it deems desirable for public use purposes; and

  c) deeding by the developer, without payment by the Province, 10% of the gross area of the proposed subdivision for use or cash-in-lieu of the land;

- to establish a fund to be used for public shore access land acquisition, the proceeds from which shall only be used for this purpose;.

- to ensure that the lands acquired under this policy are transferred for management to a Provincial department mandated with public use land development;

- that, in acquiring lands for public use and access, priority will be given to traditional access points and lands with a high value for recreational purposes;

- to ensure that management and development plans for all lands acquired under this policy will be completed within two years of the acquisition of the parcels;

- that recreation facilities constructed on the lands acquired under this Policy will be day-use in nature and may be constructed and operated by the private sector; and

- to prepare or review management plans for all shorefront lands owned by the Province with a view to identifying suitable locations for public use to occur.

V. COASTAL AREA ENVIRONMENTAL PROTECTION

Objectives

The objective respecting coastal area environmental protection is to protect the natural environment from significant negative environmental impacts resulting from development.

Policies

It is the policy of the Province:

GENERAL

- that the Significant Environmental Areas Plan is incorporated as part of this coastal area policy for those parcels of land which lie within the coastal area;

BEACHES AND DUNES

- to maintain certain representative/significant sand dune formations as non-development areas;

- to prohibit subdivision and development of land on primary and secondary sand dune formations;

- to prohibit subdivision and development of land on bay mouth barrier sand dune systems (i.e., sand bars enclosing major coastal embayments);

- to require, for subdivision and development of land in the proximity of migrating primary and secondary dune formations, that a reasonable portion of land, onto which the dune can continue to migrate, be set aside as a nondevelopment area;

- to prohibit subdivision and development of land on tertiary sand dune formations if the location, extent, nature and density of the development is deemed to have the potential to significantly and negatively alter the natural physical and biological features of the area. Subdivision and development of land on tertiary dune formations under private ownership will only be permitted where the total developed portions of the site (i.e., where the soil is disturbed by construction of buildings, landscaping, and access roads) do not exceed a small percentage of the total property area and the minimum distance between building developments is adequate to ensure that there is minimal overall disturbance to the site;

- to prohibit subdivision and development of land on tertiary sand dune formations that are under Provincial ownership;

- to prohibit subdivision and development of land on tertiary sand dune formations if the development is deemed to have the potential to threaten the immediate or long term physical stability of those or adjacent sand dune features;

SHORE EROSION

- to require that the subdivision of land, the development of property, and the construction of buildings and utilities adjacent to eroding shorelines on the perimeter coastline, and on inland bays and estuaries, have shorefront setbacks of sufficient distance to the face of the eroding bluff or sand formation to ensure that the adverse effects of erosion do not endanger the subdivision or development during the reasonable life of the development;

- to discourage fortification of eroding shorelines by artificial means;

- to prohibit development and construction that is likely to increase unreasonably the rate of shoreline erosion. Exceptions will be generally be made for fishing sheds, aquaculture facilities, boat launching facilities and wharfs;

WATERCOURSES

- to prohibit infilling of watercourses for development purposes unless such an undertaking is in the general public good and any negative immediate and long term impacts can be mitigated;

- to prohibit subdivision of land for development purposes within a distance from the boundary of a watercourse that would pose an environmental risk to the watercourse;

- to prohibit building development for residential, commercial and recreational purposes within a distance from the boundary of a watercourse that would pose a significant environmental risk to the watercourse;

- to assess the environmental impact of all building development applications for agricultural and industrial purposes in close proximity to the boundary of a watercourse;

- to establish, where feasible, the creation and maintenance of green belts in the riparian zones adjacent to streams and estuaries;

- to require that all industrial developments that produce wastewater be located according to the capacity of the receiving water to dilute, assimilate and disperse the waste products;

- to permit building and property development related to aquaculture facilities within or adjacent to the boundary of a watercourse. All such applications will be assessed on an individual basis by the Department of the Environment;

WETLAND PROTECTION

- to prohibit the infilling or destruction of wetlands unless the proposed development is judged to be for the general public good and all immediate and long term impacts can be mitigated;

- to prevent, in rural and undeveloped areas, subdivision of land for development purposes within a distance from a wetland that would create an environmental risk to the wetland;

- to permit, in urban (developed) areas, subdivision of land as near as to a wetland as possible, without creating an environmental risk to the wetland;

- to prevent building development for residential, commercial and recreational purposes in rural and undeveloped areas within a distance from a wetland that would create an environmental risk to the wetland;

- to prevent building development for residential, commercial and recreational purposes in urban and developed areas within a distance from a wetland that would create an environmental risk to the wetland;

- to prevent building development for agricultural and industrial purposes in all areas within a distance from a wetland that would create an environmental risk to the wetland;

OFFSHORE ISLANDS PROTECTION

- to protect unique or unusual features found on the offshore islands;
- to designate, maintain, and manage as a public trust, Crown lands on offshore islands;

- to prevent the bartering or trading away of Crown lands on offshore islands except in the possible consideration of special circumstances for environmental protection reasons;

- to promote the securing of natural area designations of the offshore islands with full and appropriate landowner involvement, and the preparation and adoption of management plans for each parcel of land;

- to secure, maintain, and enhance all natural features of the offshore islands through programming;

- to prohibit subdivision on any offshore island before management plans are prepared and adopted that set out long term provisions and standards for subdivision where feasible;

- to limit building development to one residential unit per parcel and accessory structure(s);

- to require that building permits will be conditional upon:

  a) availability of a fresh water supply;

  b) suitability of sewage disposal and other waste disposal systems;

  c) provision of appropriate separation distances from sensitive wildlife habitat; and

  d) protection of sensitive animal and plant environments.